IN THE SUPREME COURT OF NORTH CAROLINA

NORTH CAROLINA ASSOCIATION OF ELECTRONIC TAX FILERS, INC., and ROCKET REFUND, INC.	)	FILED May 7, 1993
v.	)	No. 228PA92-Wake
WILLIAM T. GRAHAM, Commissioner of Banks, North Carolina Banking Commission	)	

On discretionary review pursuant to N.C.G.S. § 7A-31 prior to a determination by the Court of Appeals of summary judgment for defendant entered by Stephens, J., at the 12 February 1992 Civil Session of Superior Court, Wake County. Heard in the Supreme Court 13 January 1993.

Kennedy, Kennedy, Kennedy & Kennedy, by Harvey L. Kennedy and Harold L. Kennedy, III, for plaintiff-appellants.

Michael F. Easley, Attorney General, by Philip A. Lehman, Assistant Attorney General; and L. McNeil Chestnut and Mercedes Oglukian for defendant-appellee.

North Carolina Legal Services Resource Center, Inc., by Gregory C. Malhoit, and North State Legal Services, Inc., by Carlene McNulty, for North Carolina Clients Council, amicus curiae.

PARKER, Justice.

Plaintiffs filed this action for a declaratory judgment asserting that the Refund Anticipation Loan Act, N.C.G.S. §§ 53-245 to 53-254 (effective Oct. 1, 1990), violates both the Supremacy Clause and the Commerce Clause of the United States Constitution and asking that the Act be declared unconstitutional on its face and in its application to refund anticipation loans made by out-of-state national banks. Plaintiffs moved for summary judgment; the trial court denied plaintiffs' motion and entered summary judgment in favor of defendant. The court concluded (i) there are no genuine issues of material fact and (ii) the Refund Anticipation Loan Act

violates neither the Supremacy Clause nor the Commerce Clause of the United States Constitution. On 16 July 1992 this Court granted plaintiffs' petition for discretionary review. Before this Court plaintiffs again contend the Act violates the Supremacy Clause and the Commerce Clause. We disagree and affirm summary judgment for defendant.

Plaintiffs are North Carolina corporations, each with its principal place of business in Southern Pines, North Carolina. Plaintiff Association is composed of North Carolina businesses participating in the Internal Revenue Service Electronic Filing Program for Form 1040, which permits taxpayers to file income tax returns electronically. Plaintiff Rocket Refund is a member of the Association. Members of plaintiff Association also accept and facilitate

refund anticipation loan ("RAL") applications utilizing the loan services of out-of-state national banks. To determine the validity of plaintiffs' arguments that the Refund Anticipation Loan Act violates the Supremacy and Commerce Clauses of the United States Constitution, we need at the outset to examine pertinent revenue procedures and the provisions of the Act itself.

To be accepted into the Electronic Filing Program for Form 1040, an applicant must complete an application, undergo testing of its transmitting capability, pass a suitability check, receive a letter of acceptance and obtain a filing or transmitter identification number. Rev. Proc. 91-69, 1991-2 C.B. 893, 894 (effective Jan. 1, 1992); see also Rev. Proc. 90-62, 1990-2 C.B. 659, 660 (effective Jan. 1, 1991.). Once accepted,

a participant becomes an electronic filer and is categorized as an electronic return originator, a software developer, a transmitter, or some combination thereof. Rev. Proc. 91-69, 1991-2 C.B. at 894. Revenue procedures inform electronic filers "of their obligations to the Internal Revenue Service, taxpayers, and other participants." Id. at 893. Responsibilities of electronic filers include ensuring that complete returns are accurately and efficiently filed and complying with all publications and notices of the Electronic Filing Systems Office. Id. at 895. If an electronic filer charges a fee for transmission of a tax return, the fee may not be based on a percentage of the refund amount. Id. Penalties are provided for disclosure or use of tax return information. Id. at 896. In addition, electronic filers who also meet the

definition of income tax preparers may be subjected to preparer penalties. Id. The Internal Revenue Service ("the Service") monitors electronic filers for conformity with revenue procedures; this monitoring includes checking on (i) timely receipt and legibility of forms and (ii) quality of transmission, including rejections, errors and other defects. Id. at 899. The Service also monitors complaints about filers. The Service may issue a warning letter describing specific corrective action for deviations from Revenue Procedure 91-69 or may immediately suspend a filer from the program. Id.

According to Section 9 of Revenue Procedure 91-69, "Direct Deposit of Refunds," taxpayer expecting to receive a refund may file a return electronically and elect to have the refund deposited directly into a bank account. Id. at 897; see also

Rev. Proc. 90-62, 1990-2 C.B. at 662. Section 10 of Revenue Procedure 91-69 recognizes that often taxpayers borrow against expected refunds:

> .01 A Refund Anticipation Loan (RAL) is money borrowed by a taxpayer that is based on a taxpayer's anticipated income tax refund. The Service has no involvement in RALs. This is a contract between the taxpayer and the lender. An acknowledgment from the Service processing is not a guarantee to either the taxpayer or lender that the taxpayer will receive a refund or what the amount of any refund might be.

Rev. Proc. 91-69, 1991-2 C.B. at 897. By contrast, the predecessor procedure, Revenue Procedure 90-62, provided simply, "The Service has no involvement in RALs. This is a contract between the taxpayer and the financial institution." Rev. Proc. 90-62, 1990-2 C.B. at 663. Section 10 of Revenue Procedure 91-69 also provides as

follows:

> .02 Any entity that is involved in the Electronic Filing Program, including a financial institution that accepts direct deposits of income tax refunds, has an obligation to every taxpayer who applies for an RAL to ensure that the taxpayer understands that an RAL is in fact a loan, and not a substitute for or a quicker way of receiving an income tax refund. Consequently, if a direct deposit is not made as originally anticipated by the taxpayer, the taxpayer may be liable for additional interest or fees.

Rev. Proc. 91-69, 1991-2 C.B. at 898. Other language in Section 10 regulating electronic filers facilitating RALs includes (i) a provision requiring written consent of the taxpayer before the filer may disclose tax information to a lender and (ii) a prohibition against guaranteeing the amount of the refund or the date it will be issued. Id. at 898.

The Refund Anticipation Loan Act defines an RAL as "[a] loan that the creditor arranges to be repaid directly from the proceeds of the debtor's income tax refund." N.C.G.S. § 53-246(8) (Supp. 1992). Creditors are those who make RALs, id. § 53-246(4); and facilitators are those who process, receive, or accept for delivery an application for an RAL or a check in payment of RAL proceeds or otherwise facilitate the making of RALs, id. § 53-246(6). RAL fees are "charges, fees, or other consideration charged or imposed by" creditors or facilitators. Id. § 53-246(9). RAL fees are distinct from charges for nonloan services such as preparation or electronic filing of returns. Id.

The Act requires persons handling RAL applications to register with the North Carolina Commissioner of Banks. Id. § 53-

247(a). Banks, savings associations or credit unions doing business under North Carolina or United States law are specifically exempted. Id. § 53-247(c). Failure to register constitutes a misdemeanor punishable by imprisonment of up to sixty days, a fine of up to $2,000, or both. Id. § 53-247(b). Registration procedures include submitting an application and fee of $250.00 for each office wherein RALs will be facilitated. Id. § 53-248(a). In addition the Commissioner must find "that the responsibility and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business of facilitating [RALs] will be operated" in accord with the Act. Id. If not renewed, registration expires on 31 December following the date issued; and the renewal fee is $100.00.

Id. § 53-248(b).

Registrants are subject to additional regulation, in that they must file fee schedules, id. 53-249(a); post them prominently, id. 53-249(c); and make full disclosure to debtors, id. § 53-249(d). More specifically, registrants must disclose

> [e]xamples of the annual percentage rates, as defined by the Truth In Lending Act, 15 U.S.C. § 1607 and 12 C.F.R. Section 226.22, for refund anticipation loans of five hundred dollars ($500.00), seven hundred fifty dollars ($750.00), one thousand dollars ($1,000), one thousand five hundred dollars ($1,500), two thousand dollars ($2,000), and three thousand dollars ($3,000). Regardless of disclosures of the annual percentage rate required by the Truth In Lending Act, if the debtor is required to establish or maintain a deposit account with the creditor for receipt of the debtor's tax refund to offset the amount owed on the loan, the maturity of the loan for the purpose of determining the

> annual percentage rate disclosure under this section shall be assumed to be the estimated date when the tax refund will be deposited in the debtor's account.

Id. § 53-249(d)(6).

In addition, acts specifically prohibited include (i) misrepresentation of a material factor or condition of an RAL; (ii) failing to arrange for an RAL promptly upon application; (iii) engaging in fraud; (iv) facilitating an RAL for which the fee is different from that posted or filed with the Commissioner or has been determined to be unconscionable; (v) demanding part of the loan proceeds for check cashing, credit insurance, or other goods or services unrelated to preparing and filing returns or facilitating RALs; and (vi) arranging for a secured interest in property other than the debtor's refund proceeds. Id. § 53-250. Upon finding that any conduct of a

registrant may be in violatin of the Act or that a registrant has engaged in an unfair or deceptive act or practice, the Commissioner must give notice and an opportunity for the registrant to be heard. Id. § 53-251. Upon finding conduct to be in violation of the Act, the Commissioner shall issue a cease and desist order. Id. Appeals may be taken to the North Carolina Court of Appeals. Id. § 53-252. If a registrant fails to appeal and continues to engage in prohibited conduct cited in a cease and desist order, there is a mandatory $1,000 penalty for each such act. Id. § 53-251(a). Registration may be revoked for a course of conduct in violation of the Act or continually engaging in conduct cited in a cease and desist order. Id. § 53-251(b). Civil penalties include (i) for failure to deliver proceeds of an RAL within forty-

eight hours of the time promised, refund of the RAL fee and (ii) for engaging in prohibited acts, treble RAL fees (or other unauthorized charges) plus a reasonable attorney's fee. Id. § 53-251(c).

Plaintiffs' first contention is that the Refund Anticipation Loan Act violates the Supremacy Clause. We disagree.

As stated by the United States Supreme Court, under the Supremacy Clause

> the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land." US const, Art VI, cl 2. In determining whether Congress has invoked this pre-emption power, we give primary emphasis to the ascertainment of congressional intent. This may be manifested in several ways. Chief among the indications of an intent to pre-empt is where Congress has legislated so comprehensively that it has left no room for supplementary state legislation. Pre-emption may also be found where state legislation would impede the

> purposes and objectives of Congress. In undertaking this analysis, however, we must be mindful of the principle that "federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons--either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained.

R. J. Reynolds Tobacco Co. v. Durham County, 479 U.S. 130, 140, 93 L. Ed. 2d 449, 461-62 (1986) (citations omitted); see also Cippollone v. Liggett Group, Inc., ____ U.S. ____, ____, 120 L. Ed. 2d 407, 420 (1992) (reiterating that intent to preempt may be explicitly stated in statute and finding explicit statements in Federal Cigarette Labeling and Advertising Act of 1965 and Public Health Cigarette Smoking Act of 1969).

In Reynolds Tobacco, the issue was whether Congress had exercised its power

under the Supremacy Clause to preempt state ad valorem taxation of imported goods stored in customs-bonded warehouses and destined for domestic markets. The federal statute at issue was 19 U.S.C. § 1556, and in deciding the preemption question in favor of the state, the Court said:

> Nor is there any suggestion that [ad valorem] taxation here would conflict with the central purpose behind the customs-bonded warehouses: to ensure that federal customs duties are collected. Not only is the present statutory and regulatory framework sufficient to permit customs officials to monitor the entrance and removal of goods [and] to guarantee collection of federal revenue, but Reynolds does not explain how...imposition of the North Carolina tax will prevent customs officials from receiving the duties. And the present statutes and regulations that guide this monitoring...are not so comprehensive as to leave no room for North Carolina's assessment of ad valorem taxes. Although the

> regulations are not themselves controlling on the pre-emption issue, where, as in this case, Congress has entrusted an agency with the task of promulgating regulations to carry out the purposes of a statute [19 USCS § 1556], as part of the pre-emption analysis we must consider whether the regulations evidence a desire to occupy a field completely. Pre-emption should not be inferred, however, simply because the agency's regulations are comprehensive. In this case, the current regulations, while detailed, appear to contemplate some concurrent state regulation and, arguably, even state taxation.

Id. at 148-49, 93 L. Ed. 2d at 467 (citations omitted). The Court held that North Carolina could, consistent with the Supremacy Clause, impose a nondiscriminatory ad valorem property tax on imported goods stored in a customs-bonded warehouse and destined for domestic manufacture and sale. Id. at 152, 93 L. Ed. 2d at 469.

Following Reynolds Tobacco, we begin with the principle that federal regulation is not deemed preemptive in the absence of persuasive reasons. We turn first to plaintiffs' argument that Congress has legislated so comprehensively that it has left no room for supplementary state legislation on RALs. The only federal taxation statute cited by plaintiffs provides as follows:

> **Regulations requiring returns on magnetic media, etc.**
> **(1) In general**
> The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary.
> **(2) Requirements of regulations**
> In prescribing regulations under paragraph (1), the Secretary--

> (A) shall not require any person to file returns on magnetic media unless such person is required to file at least 250 returns during the calendar year, and
> (B) shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations.

26 U.S.C. § 6011(e) (Supp. II 1990). By its plain language this statute pertains only to electronic filing. One regulation cited by plaintiffs provides as follows:

> **Composite return in lieu of specified form.**
>
> The Commissioner may authorize the use, at the option of a person required to make a return, of a composite return in lieu of any form specified in this part for use by such a person, subject to such conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate. Such composite return shall consist of a form prescribed by the Commissioner and an attachment or

> attachments of magnetic tape or other approved media. Notwithstanding any provisions in this part to the contrary, a single form and attachment may comprise the returns of more than one such person. To the extent that the use of a composite return has been authorized by the Commissioner, references in this part to a specific form for use by such a person shall be deemed to refer also to a composite return under this section.

26 C.F.R. § 1.6012-5 (1992). By its plain language this regulation pertains to composite returns. Another regulation cited by plaintiffs, 26 C.F.R. § 301.7701-15(c) (1992), mentions neither electronic filing nor RALs.

The only authority cited by plaintiffs that specifically mentions RALs is Revenue Procedure 90-62, which as noted and discussed above has been superseded by Revenue Procedure 91-69. Defendant argues that revenue procedures, being informal

service publications, are without legal effect in Supremacy Clause challenges. Caterpillar Tractor Co. v. United States, 589 F. 2d 1040, 1043 (Ct. Cl. 1978) (stating, "[I]nformal publications all the way up to revenue rulings are simply guides to taxpayers."); see also 26 C.F.R. § 601.601(d)(2)(i)(b) (1992) (defining "Revenue Procedure" as a statement that affects rights or duties of taxpayers under the Code and related statutes); Michael D. Rose and John C. Chommie, Federal Income Taxation 9-10 (3d ed. 1988) (stating that less important Service interpretations include revenue rulings; other interpretations include revenue procedures).

Even if revenue procedures had the force and effect of a federal statute or regulation, however, we are unable to conclude that either Revenue Procedure 90-

62 or its successor, Revenue Procedure 91-69, shows an intent to preempt by comprehensively legislating RALs. The detailed procedures govern electronic filing of tax returns, not RALs. In fact, both revenue procedures specifically disclaim such intention, stating, "The service has no involvement in RALs." Rev. Proc. 91-69, 1991-2 C.B. at 897; Rev. Proc. 90-62, 1990-2 C.B. at 663. The additional language in Revenue Procedure 91-69 requiring filers to ensure that taxpayers understand RALs are loans and not a substitute for or a quicker way of receiving income tax refunds is not, in our view, indicative of preemptive intent. The Service itself did not consider the 1991 additions to Revenue Procedure 90-62 to be significant changes. Rev. Proc. 91-69, 1991-2 C.B. at 894. Comparing the two revenue procedures with the comprehensive

legislative schemes at issue in Reynolds Tobacco and Cipollone, we conclude plaintiffs have failed to show preemptive intent in federal statutes or in regulations or publications of the Service.

Plaintiffs also contend the Refund Anticipation Loan Act violates the Supremacy Clause because it infringes upon and interferes with business operations of out-of-state banks. Again we disagree.

Banks are specifically exempted from the operation of the Act. N.C.G.S. § 53-247(c). The requirements of the Act are applicable only to in-state, nonbank facilitators of RALs. Even if banks were not exempt, however, plaintiffs have cited neither a specific provision of the National Banking Act nor any interpretive regulation indicative of preemptive intent with respect to RALs, and our research discloses none. Moreover, the record

discloses no evidence that any business activities of any national banks are impeded by the Act or that the Act interferes with any federal regulatory authority over national banks.

"[I]f the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law," summary judgment "shall be rendered forthwith." N.C.G.S. § 1A-1, Rule 56 (1990); Collingwood v. G.E. Real Estate Equities, 324 N.C. 63, 66, 376 S.E. 2d 425, 427 (1989). Plaintiffs having failed to show any comprehensive legislative scheme indicative of Congress' intent to preempt state legislation on RALs, we conclude the Refund Anticipation Loan Act does not violate the Supremacy Clause; therefore, we

hold the trial court did not err in granting summary judgment for defendants on this issue.

Plaintiffs' second and final contention is that the Act violates the Commerce Clause. Again we disagree.

"Although the commerce clause conferred on the national government power to regulate commerce...in the absence of conflicting legislation by Congress, there is a residuum of power in the state[s] to make laws governing matters of local concern which nevertheless...affect interstate commerce or even...regulate it." Southern Pacific Co. v. Arizona, 325 U.S. 761, 766-67, 89 L. Ed. 1915, 1923 (1945); see also Kassel v. Consolidated Freightways Corp., 450 U.S. 662, 669-70, 67 L. Ed. 2d 580, 586 (1981) (reaffirming same principle). "Not every exercise of state power with some impact on interstate

commerce is invalid." Edgar v. Mite Corp., 457 U.S. 624, 640, 73 L. Ed. 2d 269, 282 (1982). A two-tiered approach to analyzing state economic regulation under the Commerce Clause has been adopted by the United States Supreme Court:

> When a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry. When, however, a statute has only indirect effects on interstate commerce and regulates evenhandedly, we have examined whether the State's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits. We have also recognized that there is no clear line separating the category of state regulation that is virtually per se invalid under the Commerce Clause and the category subject to the...balancing approach. In either situation the critical consideration is the overall effect of the statute on both local and interstate activity.

Brown-Forman Distillers v. N.Y. Liquor Auth., 476 U.S. 573, 578-79, 90 L. Ed. 2d 552, 559-60 (1986) (citations omitted). In Brown-Forman Distillers, appellant contended that a state statute directly regulated interstate commerce because it effectively regulated the price at which liquor was sold in other states and disadvantaged consumers in other states. Id. at 579-80, 90 L. Ed 2d at 560. Defendant argues, and we agree, that the Refund Anticipation Loan Act does not directly regulate interstate commerce and that it does not favor in-state economic interests over out-of-state interests. In this respect we find plaintiffs' case to be distinguishable from Brown-Forman.

Turning, then, to the second tier of the Brown-Forman analysis, we note first that since all RAL facilitators are required to register, the Act regulates

evenhandedly. In addition, the legitimacy of the Act's purpose is unassailable. The Act's primary purpose is consumer protection: It ensures disclosure of two kinds of information important to potential debtors. First, facilitators must disclose that RAL transactions are not the same as tax refunds or the electronic filing of tax returns. In addition the actual cost of an RAL must be disclosed.

The actual cost of an RAL, expressed as an annual percentage rate, may be quite high. The affidavit of W. Reitzel Deaton, Consumer Finance Administrator for the North Carolina Banking Commission, states that the typical transaction includes three separate fees, all deducted from the debtor's loan proceeds: (i) a preparation fee (if the registrant is also the preparer); (ii) a fee for electronic filing; and (iii) a fee charged by the

creditor who makes the loan. The Commissioner's authority as to fees is limited to determining if loan fees are unconscionable. N.C.G.S. § 53-249(b). The average loan fee charged in 1991 was $33.00. The Commissioner has determined that a loan fee of $60.00 would be unconscionable. The effective annual percentage rate for a $500.00 RAL with a $60.00 loan fee would be 243.33%, based on an 18-day period for repayment by refund, the period used by the largest RAL facilitator in North Carolina. According to defendant, the effective annual percentage rate for a $500.00 RAL with a $30.00 loan fee would be over 100% for the same 18-day period. We agree with defendant that North Carolina has an interest in ensuring that this state's residents are fully informed as to (i) the difference between an RAL and simple

electronic filing of refunds and (ii) the potentially high cost of an RAL.

The United States Supreme Court has recognized that state statutes enacted for a legitimate local purpose may still violate the Commerce Clause if they further the purpose only marginally or place an undue burden on interstate commerce. Kassel v. Consolidated Freightways Corp., 450 U.S. at 670, 67 L. Ed. 2d at 587. The burden imposed on interstate commerce by the Refund Anticipation Loan Act, however, is minimal. We also note that other courts have protected state registration statutes from challenges based on the Commerce Clause. Sear, Roebuck and Co. v. Brown, 806 F. 2d 399 (2d Cir. 1986) (applying balancing test and holding banking statute, which regulated manner and extent to which bank or savings and loan holding companies could establish offices in state, did not

violate Commerce Clause); Oil Resources v. State of Fla., Dept. of Banking, 583 F. Supp. 1027 (S.D. Fla.) (applying balancing test and holding statute, which required securities dealers to register with state banking department, did not violate Commerce Clause), aff'd, 746 F. 2d 814 (11th Cir. 1984).

Furthermore, the Act is not different in scope from other North Carolina statutes which require registration or licensing of businesses for consumer protection purposes. These include statutes governing finance companies, N.C.G.S. §§ 53-165 to 53-191 (1990 and Supp. 1992); collection agencies, N.C.G.S. §§ 58-70-1 to 58-70-125 (1991); loan brokers, N.C.G.S. §§ 66-106 to 66-112 (1991); business opportunity sellers, N.C.G.S. §§ 66-94 to 66-100 (1992); mortgage brokers, N.C.G.S. §§ 53-233 to 53-244 (1990 and Supp. 1992); and

automobile dealers and manufacturers , N.C.G.S. §§ 20-285 to 20-308.2 (1989 and Supp. 1992). All these businesses may be engaged in interstate commerce. Nevertheless, the constitutionality of such state regulatory statutes is accepted because they serve the legitimate purpose of consumer protection and impose only a minimal burden on interstate commerce.

Having determined that the Act's burden on interstate commerce is only incidental; that the burden does not exceed the local benefits; and that no pervasive federal regulatory scheme exists for RALs, we conclude the Refund Anticipation Loan Act does not place an undue burden on interstate commerce. Accordingly, we hold that under Collingwood, the trial court did not err in granting summary judgment for defendant on this issue.

AFFIRMED.

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
WAKE COUNTY	92 CVS 00032

NORTH CAROLINA ASSOCIATION OF ELECTRONIC TAX FILERS, INC. and ROCKET REFUND, INC.,	)	
Plaintiffs,	)	
vs.	)	JUDGMENT
WILLIAM T. GRAHAM, Commissioner of Banks, North Carolina Banking Commission,	)	
Defendant.	)	

THIS CAUSE came on to be heard before the undersigned Superior Court Judge this 12th day of February, 1992, on the plaintiffs' motion for summary judgment. From the record herein the briefs and arguments of counsel, the Court makes the following conclusions of law:

1. There are no genuine issues of material fact and the matter is appropriate

for resolution by summary judgment.

2. The plaintiffs' motion for summary judgment is based on their claim that the Refund Anticipation Loan Act, G.S. § 53-245 et seq. is unconstitutional on its face because it allegedly violates the supremacy and commerce clauses of the U.S. Constitution. There are no other issues for resolution in this case other than these constitutional claims.

3. The Refund Anticipation Loan Act does not violate the supremacy or commerce clauses of the U.S.Constitution. Said act is a valid enactment of the North Carolina General Assembly and is constitutional on its face.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiffs' motion for summary judgment is denied; that summary judgment is entered in favor of the defendant; and that the plaintiffs' action

is dismissed with prejudice.

This the 14th day of August, 1992.

s/ Donald W. Stephens
Superior Court Judge

Refund Anticipation Loan Act

§ 53-245. Title and scope.

(a) Title. This Article shall be known and cited as the "Refund Anticipation Loan Act".

(b) Scope. No person may individually or in conjunction or cooperation with another person process, receive, or accept for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner facilitate the making of a refund anticipation loan unless the person has complied with the provisions of this Article. In addition, G.S. 143-3.3 prohibits refund anticipation loans repaid from refunds of North Carolina tax.

§ 53-246. Definitions.

The following definitions apply in this Article:

(1) Applicant. A person who applies for registration as a facilitator of refund anticipation loans.

(2) Commission. The State Banking Commission.

(3) Commissioner. The Commissioner of Banks.

(4) Creditor. A person who makes a refund anticipation loan.

(5) Debtor. A person who receives the proceeds of a refund anticipation loan.

(6) Facilitator. A person who individually or in conjunction or cooperation with another person processes, receives, or accepts for delivery an application for a

refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner facilitates the making of a refund anticipation loan.

(7) Person. An individual, a firm, a partnership, an association, a corporation, or another entity.

(8) Refund anticipation loan. A loan that the creditor arranges to be repaid directly from the proceeds of the debtor's income tax refund.

(9) Refund anticipation loan fee. The charges, fees, or other consideration charged or imposed by the creditor or facilitator for the making of a refund anticipation loan. This term does not include any charge, fee, or other consideration usually charged or imposed by the facilitator in the ordinary course of business for nonloan services, such as fees for tax return preparation and fees for electronic filing of tax returns.

(10) Registrant. A person who is registered as a facilitator of refund anticipation loans under this Article.

§ 53-247. Registration requirement.

(a) Registration Requirement. No person may individually or in conjunction or cooperation with another person process, receive, or accept for delivery an application for a refund anticipation loan or a check in payment of refund

anticipation loan proceeds without first being registered with the Commissioner in accordance with the registration procedure provided in this Article.

(b) Criminal Penalty. Violation of this section is a misdemeanor, punishable by imprisonment up to 60 days, a fine of up to two thousand dollars ($2,000), or both.

(c) Exemption. This section does not apply to a person doing business as a bank, savings association, or credit union, under the laws of this State or the United States.

§ 53-248. Registration procedure.

(a) Initial Registration. An application to become registered as a facilitator shall be in writing, under oath, and in a form prescribed by the Commissioner. The application shall contain all information prescribed by the Commissioner. Each application for registration shall be accompanied by a fee, payable to the Commissioner, of two hundred fifty dollars ($250.00) for each office where the registrant intends to facilitate refund anticipation loans.

Upon the filing of an application for registration, if the Commissioner finds that the responsibility and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business of facilitating refund anticipation loans will be operated within the purposes of this Article, the Commissioner shall register the applicant as a facilitator of refund anticipation loans and shall issue and transmit to the applicant a certificate attesting to the registration. If the Commissioner does not

so find, he shall not register the applicant and shall notify the applicant of the reasons for the denial.

Upon receipt of a certificate of registration, the applicant is registered under this Article and may engage in the business of facilitating refund anticipation loans at the offices identified on the application for registration.

(b) Renewal. Each registration as a facilitator of refund anticipation loans shall expire on December 31 following the date it was issued, unless it is renewed for the succeeding year. Before the registration expires, the registrant may renew the registration by filing with the Commissioner an application for renewal in the form and containing all information prescribed by the Commissioner. Each application for renewal of registration shall be accompanied by a fee of one hundred dollars ($100.00) for each office where the registrant intends to facilitate refund anticipation loans during the succeeding year.

Upon the filing of an application for renewal of registration under this Article, the Commissioner shall renew the registration unless the Commissioner determines that the fitness of the registrant or the operations of the registrant would not support registration of the registrant under subsection (a). If the Commissioner makes such a determination, he shall so notify the registrant, stating the reasons for the determination.

(c) Display of Certificate. Each registrant shall prominently display a certificate issued under this Article in

each place of business in the State where the registrant facilitates the making of refund anticipation loans.

§ 53-249. Filing and posting of loan fees; disclosures.

(a) Filing of Fee Schedule. On or before January 2 of each year, each registrant shall file with the Commissioner a schedule of the refund anticipation loan fees for refund anticipation loans to be facilitated by the registrant during the succeeding year. Immediately upon learning of any change in the refund anticipation loan fee for that year, the registrant shall file an amendment with the Commissioner setting out the change. Filing is effective upon receipt of the Commissioner.

(b) Notice of Unconscionable Fee. If the Commissioner finds that a refund anticipation loan fee filed pursuant to subsection (a) is unconscionable, he shall notify the registrant that (i) in his opinion the fee is unconscionable and (ii) the consequences of charging a refund anticipation loan fee in an amount that the Commissioner has notified the registrant is unconscionable include liability to the debtor for three times the amount of that fee and possible revocation of registration as a facilitator after notice and a hearing.

(c) Posting of Fee Schedule. Every registrant shall prominently display at each office where the registrant is facilitating refund anticipation loans a schedule showing the current refund anticipation loan fees for refund anticipation loans facilitated at the

office and the current electronic filing fees for the electronic filing of the taxpayer's tax return. Every registrant shall also prominently display on each fee schedule a statement to the effect that the taxpayer may have the tax return filed electronically without also obtaining a refund anticipation loan unless (i) the schedule required by this subsection is displayed and (ii) the refund anticipation loan fee actually charged is the same as the fee displayed on the schedule and the fee filed with the Commissioner pursuant to subsection (a).

(d) Disclosures. At the time a debtor applies for a refund anticipation loan, the registrant shall disclose to the debtor on a form separate from the application:

(1) The fee for the loan.

(2) The fee for electronic filing of a tax return.

(3) The time within which the proceeds of the loan will be paid to the debtor if the loan is approved.

(4) That the debtor is responsible for repayment of the loan and related fees in the event the tax refund is not paid or is not paid in full.

(5) The availability of electronic filing of the taxpayer's tax return, along with the average time announced by the appropriate taxing authority within which a taxpayer can expect to receive a refund if the taxpayer's return is filed electronically and the taxpayer does not obtain a refund anticipation loan.

(6) Examples of the annual percentage

rates, as defined by the Truth In Lending Act, 15 U.S.C. § 1607 and 12 C.F.R. Section 226.22, for refund anticipation loans of five hundred dollars ($500.00), seven hundred fifty dollars ($750.00), one thousand dollars ($1,000), one thousand five hundred dollars ($1,500), two thousand dollars ($2,000), and three thousand dollars ($3,000). Regardless of disclosures of the annual percentage rate required by the Truth In Lending Act, if the debtor is required to establish or maintain a deposit account with the creditor for receipt of the debtor's tax refund to offset the amount owed on the loan, the maturity of the loan for the purpose of determining the annual percentage rate disclosure under this section shall be assumed to be the estimated date when the tax refund will be deposited in the debtor's account.

§ 53-250. Prohibited activities.

A facilitator of a refund anticipation loan may not engage in any of the following activities:

(1) Misrepresenting a material factor or condition of a refund anticipation loan.

(2) Failing to arrange for a refund anticipation loan promptly after the debtor applies for the loan.

(3) Engaging in any transaction, practice, or course of business that operates a fraud upon any

person in connection with a refund anticipation loan.

(4) Facilitating a refund anticipation loan for which the refund anticipation loan fee is (i) different from the fee posted or the fee filed with the Commissioner or (ii) in an amount that the Commissioner has notified the facilitator is unconscionable.

(5) Directly or indirectly arranging for payment of any portion of the refund anticipation loan for check cashing, credit insurance, or any other good or service unrelated to (i) preparing and filing tax returns or (ii) facilitating refund anticipation loans.

(6) Arranging for a creditor to take a security interest in any property of the debtor other than the proceeds of the debtor's tax refund to secure payment of the loan.

§ 53-251. Cease and desist; revocation of registration; penalties.

(a) Cease and Desist Order. Upon the finding that any action of a registrant may be in violation of this Article or that the registrant has engaged in an unfair or deceptive act or practice, the Commissioner shall give reasonable notice to the registrant of the suspected violation or unfair or deceptive act or practice, and an opportunity for the registrant to be heard. If, following the hearing, the the Commissioner finds that an action of the

registrant is in violation of this Article or that the registrant has engaged in an unfair or deceptive act or practice, the Commissioner shall order the registrant to cease and desist from the action.

If the registrant fails to appeal a cease and desist order of the Commissioner in accordance with G.S. 53-252 and continues to engage in an action in violation of the Commissioner's order to cease and desist from the action, the registrant shall be subject to a penalty of one thousand dollars ($1,000) for each action it takes in violation of the Commissioner's order.

(b) Revocation of Registration. After notice and hearing, and upon the finding that a registrant has (i) engaged in a course of conduct that is in violation of this Article or (ii) continued to engage in an action in violation of a cease and desist order of the Commissioner that has not been stayed upon application of the registrant the Commissioner may revoke the registration of the registrant temporarily or permanently in the discretion of the Commissioner.

(c) Civil Penalties. Except in the case of a refund anticipation loan that is not approved by the creditor, a facilitator who fails to deliver to the debtor the proceeds of a refund anticipation loan within 48 hours after the time period promised by the facilitator when the debtor applied for the loan shall pay to the debtor an amount equal to the refund anticipation loan fee. A facilitator who engages in an activity prohibited under G.S. 53-250 in connection with a refund anticipation loan is liable to the debtor for damages of three times the amount of

the refund anticipation loan fee or other unauthorized charge plus a reasonable attorney's fee.

§ 53-252. Appeal of Commissioner's decision.

Notwithstanding any other provision of law, an aggrieved party may, within 30 days after a final decision of the Commissioner and with written notice to the Commissioner, appeal the decision directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days after receipt of notice of appeal. The record shall include all memoranda and briefs, and any other documents, data, information, or evidence submitted by any party to the proceeding except for material such as trade secrets normally not available through commercial publication for which a party has made a claim of confidentiality and requested exclusion from the record. All factual information contained in any report submitted to or obtained by the Commissioner's staff shall also be made a part of the record unless deemed confidential by the Commissioner.

§ 53-253. Rules; enforcement.

Notwithstanding the provisions of G.S. 53-95, the Commissioner may promulgate reasonable rules as necessary to effectuate the purpose of this Article, to provide for the protection of the borrowing public, and to assist registrants in interpreting this Article. In order to enforce this Article,

the Commissioner may make investigations, subpoena witnesses, require audits and reports, and conduct hearings regarding possible violations of its provisions.

§ 53-254. Exemption.

This Article does not apply to a person who does not deal directly with debtors but who acts solely as an intermediary by processing or transmitting, electronically or otherwise, tax or credit information or by preparing for a facilitator refund anticipation loan checks to be delivered by the facilitator to the debtor.